

AMENDED IN ASSEMBLY MAY 11, 2006

AMENDED IN SENATE APRIL 4, 2005

**SENATE BILL**

**No. 579**

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**Introduced by Senator Aanestad**

February 18, 2005

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An act to amend ~~Section 3129 of~~ Sections 3056, 3059, and 3102 of, and to add Section 3057 to, the Business and Professions Code, relating to optometry, and making an appropriation therefor.

LEGISLATIVE COUNSEL'S DIGEST

SB 579, as amended, Aanestad. Optometry: ~~advertisement licenses:~~ advertisements.

(1) Under existing law, the Optometry Practice Act, the State Board of Optometry licenses and regulates persons engaged in the practice of optometry and makes a violation of the act a crime. Existing law authorizes the board to issue a certificate of registration to a person licensed in another state who, among other things, is a full-time faculty member of a specified accredited California school or college of optometry. Existing law authorizes the board to adopt regulations requiring licensees to maintain current certification in cardiopulmonary resuscitation. The act directs the deposit of all revenue collected by the board into the Optometry Fund, in which funds, other than penalty revenue, are continuously appropriated.

This bill would authorize the board also to issue a license to a person that, among other things, has passed a licensing examination for an optometric license in another state, submits proof of licensure in good standing, as defined, submits proof of active practice for a minimum of 5,000 hours, pays an application fee, and files an application with an acknowledgment executed under penalty of

*perjury, as specified. The bill would authorize the board, in cases where the person has been displaced by a federally-declared emergency, to approve an application where the person's time in active practice is less than 5,000 hours. The bill would eliminate the board's authority to adopt regulations requiring licensees to maintain current certification in cardiopulmonary resuscitation. By increasing that part of the revenue in the Optometry Fund that is continuously appropriated, the bill would make an appropriation. By expanding the crime of perjury, the bill would impose a state-mandated local program. The bill would also make technical, nonsubstantive, and conforming changes.*

(2) Existing law makes it unlawful to advertise optometric services as being free or without cost.

This bill would instead make it unlawful to advertise as being free or without cost the furnishing of optometric services where the services are contingent upon payment or other exchange of consideration unless the contingency is fully disclosed.

Because a violation of ~~the bill~~ *this provision* would be a crime, ~~it~~ *the bill* would impose a state-mandated local program.

(3) The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

Vote: majority. Appropriation: ~~no~~ *yes*. Fiscal committee: yes. State-mandated local program: yes.

*The people of the State of California do enact as follows:*

- 1    ~~SECTION 1. Section 3129 of the Business and Professions~~
- 2    ~~Code is amended to read:~~
- 3    ~~3129. It is unlawful to advertise as being free or without cost~~
- 4    ~~the furnishing of optometric services where these services are~~
- 5    ~~contingent upon payment or other exchange of consideration for~~
- 6    ~~goods or other services offered by the provider, unless any such~~
- 7    ~~contingency is fully disclosed in the same advertisement.~~
- 8    *SECTION 1. Section 3056 of the Business and Professions*
- 9    *Code is amended to read:*

1     3056. ~~Notwithstanding any other provision of this chapter,~~  
2 ~~the~~ (a) The board may issue a ~~certificate of registration~~ license to  
3 practice optometry to a person who meets all of the following  
4 qualifications:

5     ~~(a)~~

6     (1) Has a degree as a doctor of optometry issued by an  
7 accredited school or college of optometry.

8     ~~(b)~~

9     (2) Is currently licensed in another state.

10    ~~(c)~~

11    (3) Is currently a full-time faculty member of an accredited  
12 California school or college of optometry and has served in that  
13 capacity for a period of at least five continuous years.

14    ~~(d)~~

15    (4) Has attained, at an accredited California school or college  
16 of optometry, the academic rank of professor, associate  
17 professor, or clinical professor, except that the status of adjunct  
18 or affiliated faculty member shall not be deemed sufficient.

19    ~~(e)~~

20    (5) Has successfully passed the board's jurisprudence  
21 examination.

22    ~~(f)~~

23    (6) Is in good standing, with no past or pending malpractice  
24 awards or judicial or administrative actions.

25    ~~(g)~~

26    (7) Has met the minimum continuing education requirements  
27 set forth in Section 3059 for the current and preceding year.

28    ~~(h)~~

29    (8) Has met the requirements of Section ~~3041.2~~ 3041.3  
30 regarding the use of *therapeutic* pharmaceutical agents under  
31 subdivision (e) of Section 3041.

32    ~~(i)~~

33    (9) Has never had his or her license to practice optometry  
34 revoked or suspended.

35    ~~(j)~~

36    (10) Is not subject to denial based on any of the grounds listed  
37 in Section 480.

38    ~~(k)~~

39    (11) Pays an application fee in an amount equal to the  
40 application fee prescribed by the board pursuant to Section 3152.

1     ~~(12)~~

2     (12) Files an application on a form prescribed by the board.

3     ~~(b) Any certificate of registration license issued pursuant to~~  
4     this section shall expire as provided in Section 3146, and may be  
5     renewed as provided in this chapter, subject to the same  
6     conditions as other ~~certificates of registration licenses~~ issued  
7     under this chapter.

8     (c) The term “in good standing,” as used in this section,  
9     means that a person under this section:

10    (1) Is not currently under investigation nor has been charged  
11    with an offense for any act substantially related to the practice of  
12    optometry by any public agency, nor entered into any consent  
13    agreement or subject to an administrative decision that contains  
14    conditions placed by an agency upon a person’s professional  
15    conduct or practice, including any voluntary surrender of  
16    license, nor been the subject of an adverse judgment resulting  
17    from the practice of optometry that the board determines  
18    constitutes evidence of a pattern of incompetence or negligence.

19    (2) Has no physical or mental impairment related to drugs or  
20    alcohol, and has not been found mentally incompetent by a  
21    physician so that the person is unable to undertake the practice  
22    of optometry in a manner consistent with the safety of a patient  
23    or the public.

24    SEC. 2. Section 3057 is added to the Business and  
25    Professions Code, to read:

26    3057. (a) The board may issue a license to practice  
27    optometry to a person who meets all of the following  
28    requirements:

29    (1) Has a degree as a doctor of optometry issued by an  
30    accredited school or college of optometry.

31    (2) Has successfully passed the licensing examination for an  
32    optometric license in another state.

33    (3) Submits proof that he or she is licensed in good standing  
34    as of the date of application in every state where he or she holds  
35    a license, including compliance with continuing education  
36    requirements.

37    (4) Submits proof that he or she has been in active practice in  
38    a state in which he or she is licensed for a total of at least 5,000  
39    hours in five of the seven consecutive years immediately  
40    preceding the date of his or her application under this section.

1 (5) Is not subject to disciplinary action as set forth in  
2 subdivision (h) of Section 3110. If the person has been subject to  
3 disciplinary action, the board shall review that action to  
4 determine if it presents sufficient evidence of a violation of this  
5 chapter to warrant the submission of additional information from  
6 the person or the denial of the application for licensure.

7 (6) Has furnished a signed release allowing the disclosure of  
8 information from the National Practitioner Data Bank and, if  
9 applicable, the verification of registration status with the federal  
10 Drug Enforcement Administration. The board shall review this  
11 information to determine if it presents sufficient evidence of a  
12 violation of this chapter to warrant the submission of additional  
13 information from the person or the denial of the application for  
14 licensure.

15 (7) Has never had his or her license to practice optometry  
16 revoked or suspended.

17 (8) Is not subject to denial of an application for licensure  
18 based on any of the grounds listed in Section 480.

19 (9) Has met the minimum continuing education requirements  
20 set forth in Section 3059 for the current and preceding year.

21 (10) Has met the certification requirements of Section 3041.3  
22 to use therapeutic pharmaceutical agents under subdivision (e)  
23 of Section 3041.

24 (11) Submits any other information as specified by the board  
25 to the extent it is required for licensure by examination under this  
26 chapter.

27 (12) Files an application on a form prescribed by the board,  
28 with an acknowledgment by the person executed under penalty of  
29 perjury and automatic forfeiture of license, of the following:

30 (A) That the information provided by the person to the board  
31 is true and correct, to the best of his or her knowledge and belief.

32 (B) That the person has not been convicted of an offense  
33 involving conduct that would violate Section 810.

34 (13) Pays an application fee in an amount equal to the  
35 application fee prescribed pursuant to subdivision (a) of Section  
36 3152.

37 (14) Has successfully passed the board's jurisprudence  
38 examination.

39 (b) If the board finds that the competency of a candidate for  
40 licensure pursuant to this section is in question, the board may

1 *require the passage of a written, practical, or clinical exam or*  
2 *completion of additional continuing education or coursework.*

3 *(c) In cases where the person establishes, to the board's*  
4 *satisfaction, that he or she has been displaced by a*  
5 *federally-declared emergency and cannot relocate to his or her*  
6 *state of practice within a reasonable time without economic*  
7 *hardship, the board is authorized to do both of the following:*

8 *(1) Approve an application where the person's time in active*  
9 *practice is less than that specified in paragraph (4) of*  
10 *subdivision (a), if a sufficient period in active practice can be*  
11 *verified by the board and all other requirements of subdivision*  
12 *(a) are satisfied by the person.*

13 *(2) Reduce or waive the fees required by paragraph (13) of*  
14 *subdivision (a).*

15 *(d) Any license issued pursuant to this section shall expire as*  
16 *provided in Section 3146, and may be renewed as provided in*  
17 *this chapter, subject to the same conditions as other licenses*  
18 *issued under this chapter.*

19 *(e) The term "in good standing," as used in this section,*  
20 *means that a person under this section:*

21 *(1) Is not currently under investigation nor has been charged*  
22 *with an offense for any act substantially related to the practice of*  
23 *optometry by any public agency, nor entered into any consent*  
24 *agreement or subject to an administrative decision that contains*  
25 *conditions placed by an agency upon an person's professional*  
26 *conduct or practice, including any voluntary surrender of*  
27 *license, nor been the subject of an adverse judgment resulting*  
28 *from the practice of optometry that the board determines*  
29 *constitutes evidence of a pattern of incompetence or negligence.*

30 *(2) Has no physical or mental impairment related to drugs or*  
31 *alcohol, and has not been found mentally incompetent by a*  
32 *physician so that the person is unable to undertake the practice*  
33 *of optometry in a manner consistent with the safety of a patient*  
34 *or the public.*

35 *SEC. 3. Section 3059 of the Business and Professions Code is*  
36 *amended to read:*

37 *3059. (a) It is the intent of the Legislature that the public*  
38 *health and safety would be served by requiring all holders of*  
39 *licenses to practice optometry granted under this chapter to*  
40 *continue their education after receiving their licenses. The board*

1 shall adopt regulations that require, as a condition to the renewal  
2 thereof, that all holders of licenses submit proof satisfactory to  
3 the board that they have informed themselves of the  
4 developments in the practice of optometry occurring since the  
5 original issuance of their licenses by pursuing one or more  
6 courses of study satisfactory to the board or by other means  
7 deemed equivalent by the board.

8 (b) The board may, in accordance with the intent of this  
9 section, make exceptions from continuing education  
10 requirements for reasons of health, military service, or other good  
11 cause.

12 (c) If for good cause compliance cannot be met for the current  
13 year, the board may grant exemption of compliance for that year,  
14 provided that a plan of future compliance that includes current  
15 requirements as well as makeup of previous requirements is  
16 approved by the board.

17 (d) The board may require that proof of compliance with this  
18 section be submitted on an annual or biennial basis as determined  
19 by the board.

20 ~~(e) The board may adopt regulations to require licensees to~~  
21 ~~maintain current certification in cardiopulmonary resuscitation.~~  
22 ~~Training required for the granting or renewal of a~~  
23 ~~cardiopulmonary certificate shall not be credited towards the~~  
24 ~~requirements of subdivision (a) or (f).~~

25 ~~(f)~~ An optometrist certified to use therapeutic pharmaceutical  
26 agents pursuant to Section 3041.3 shall complete a total of 50  
27 hours of continuing education every two years in order to renew  
28 his or her certificate. Thirty-five of the required 50 hours of  
29 continuing education shall be on the diagnosis, treatment, and  
30 management of ocular disease in any combination of the  
31 following areas:

- 32 (1) Glaucoma.
- 33 (2) Ocular infection.
- 34 (3) Ocular inflammation.
- 35 (4) Topical steroids.
- 36 (5) Systemic medication.
- 37 (6) Pain medication.

38 ~~(g)~~

1 (f) The board shall encourage every optometrist to take a  
2 course or courses in pharmacology and pharmaceuticals as part  
3 of his or her continuing education.

4 ~~(h)~~

5 (g) The board shall consider requiring courses in child abuse  
6 detection to be taken by those licensees whose practices are such  
7 that there is a likelihood of contact with abused or neglected  
8 children.

9 ~~(i)~~

10 (h) The board shall consider requiring courses in elder abuse  
11 detection to be taken by those licensees whose practices are such  
12 that there is a likelihood of contact with abused or neglected  
13 elder persons.

14 *SEC. 4. Section 3102 of the Business and Professions Code is*  
15 *amended to read:*

16 3102. It is unlawful to advertise as being free or without cost  
17 ~~the examination or treatment of the eyes or the~~ furnishing of  
18 ~~optometrical~~ optometric services where these services are  
19 contingent upon payment or other exchange of consideration for  
20 goods or other services offered by the provider, unless that  
21 contingency is fully disclosed in the same advertisement.

22 ~~SEC. 2~~

23 *SEC. 5.* No reimbursement is required by this act pursuant to  
24 Section 6 of Article XIII B of the California Constitution because  
25 the only costs that may be incurred by a local agency or school  
26 district will be incurred because this act creates a new crime or  
27 infraction, eliminates a crime or infraction, or changes the  
28 penalty for a crime or infraction, within the meaning of Section  
29 17556 of the Government Code, or changes the definition of a  
30 crime within the meaning of Section 6 of Article XIII B of the  
31 California Constitution.